

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

DARYL SMOOT,

Defendant.

CASE NO. 8:07CR197

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) in this case. The Plaintiff has objected to the report on the basis of the quantity of controlled substance attributable to the Defendant, and states that it will stand by the plea agreement. (Filing No. 56). The Defendant also objects to the report on the basis of the quantity of controlled substance attributable to him and to paragraphs 46 and 48 as they relate to his criminal history. (Filing No. 60) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory. The objections regarding quantity will be sustained, and the objection regarding paragraph 46 and the over-representation of the Defendant’s criminal history by the assigned category shall be heard before sentencing.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects except with regard to 1) the quantity of controlled substances attributable to the Defendant, and that the terms of the plea agreement will be honored in regard to this issue, and to 2) paragraph 46 and issues relating to the PSR's over-representation of the seriousness of the Defendant's criminal history;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of January, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge